



September 12, 2006

SUBJECT: Revised/Updated Agreement between City of Sunnyvale and Sunnyvale Historical Society and Museum Association for the Design, Development, Construction and Lease of a Heritage Museum at Sunnyvale Heritage Center at the Sunnyvale Community Center

REPORT IN BRIEF

On June 15, 2004, the City Council approved an agreement between the City and the Sunnyvale Historical Society and Museum Association (SHSMA) for a future Heritage Museum at the Community Center's Sunnyvale Heritage Center. Recently, it was noted that wording in this agreement did not satisfy California State requirements describing the on-going relationship between the City and the SHSMA, thereby leaving the Historical Society vulnerable to losing state grant funding toward construction of the new Heritage Museum. The revised agreement clarifies the original agreement's intent as a lease agreement between the City and the SHSMA and meets the California Cultural and Historical Endowment Office requirements for grant funding. (See Attachment A: Revised/Updated Agreement). Revisions are also included to describe the relationship between the City and the SHSMA for the SHSMA's use of City facilities until the new Heritage Museum is constructed and open to the public.

Staff recommends that the City Council approve the revised agreement as proposed.

BACKGROUND

On June 15, 2004, an agreement between City of Sunnyvale and Sunnyvale Historical Society and Museum Association for the Design, Development, Operation and Maintenance of a Heritage Museum at Sunnyvale Heritage Center at the Sunnyvale Community Center was approved by City Council (Reference RTC 04-227). The approval of this agreement opened the door to the fund-raising campaign conducted by the SHSMA for the construction and operation of a new Heritage Museum to be located on City property at the Sunnyvale Community Center.

In its successful fundraising effort, the Society applied for and received approval for a \$600,000 grant from the state of California Cultural and Historical Endowment Office which effectively pushed the Society's fund raising efforts well past the minimum required to begin construction.

However, when the Society sent the state the copy of the agreement it has with the City in order to comply with the grant guidelines, the California Cultural and

Historical Endowment Office noted that the terms of the agreement that relate to the ownership and lease of the property did not satisfy the state's requirements. The agreement would need to be reworded and/or an addendum added, or the Society risks losing the grant funding.

EXISTING POLICY

From the Open Space and Recreation Sub-Element:

Programming
2.2.B.6: Leverage available resources by pursuing co-funded and/or cooperative agreements for provision and maintenance of programs, facilities, and services, in order to maximize benefits to the community. Partners may include, but are not limited to, school districts, non-profit groups, governmental agencies and businesses.

Regional
Approach
2.2.C.1: Support activities and legislation that will provide additional local, county, and regional park acquisition, development, and maintenance and recreational opportunities.

Regional
Approach
2.2.C.2: Support public and private efforts in and around Sunnyvale to acquire, develop and maintain open space and recreation facilities and services for public use.

From the City's Legislative Policy Manual:

Policy 7.2.6: Relationships With Outside Groups

DISCUSSION

The specific conditions of the agreement that need to change to meet the requirements of the California Cultural and Historical Endowment grant relate to the management of the museum construction project and the long-term use of the City's property for museum purposes. Specifically, these changes include:

- Clarifying that this is a **lease** agreement, once the construction of the new Heritage Museum is completed, the City will retain ownership of the building and the Society will have exclusive use and occupancy of the museum.
- The revised agreement shall remain operative and continue in full force and effect for fifty (50) years from the execution of the 2004 agreement, a date of June 20, 2054.

- The Society has **exclusive** control over the planning, design and construction of the new museum and must follow the City's normal building site check and building plan approval processes.

Since the agreement is proposed to be revised, it is also timely to correct what are housekeeping issues in that the earlier agreement did not address the relationship between the City and the SHSMA for the Historical Society's use of the Murphy Park Building and the Heritage Center meeting rooms for Society programs until the new facility is completed. Additional information is proposed in the revised agreement to allow the Society advance reservations and free use of those meeting rooms on a first-come first-serve basis for their meetings and educational programs. This section of the new agreement captures what has been an on-going practice and is similar to the arrangements that the Parks and Recreation Department has with several other once co-sponsored clubs and organizations that have relationship agreements with the City. (See Attachment A: Revised/ Updated Agreement.)

FISCAL IMPACT

The approval of the attached agreement (Attachment A) would have, in itself, no fiscal impact since the proposed changes are to clarify an existing agreement and to capture current practices regarding the Historical Society's use of City facilities. It does not change the requirements of the earlier agreement approved by City Council on June 15, 2004.

PUBLIC CONTACT

Public contact was made through posting of the Council agenda on the City's official notice bulletin board, posting of the agenda and report on the City's web page, publication of the Council agenda in the San Jose Mercury News, and the availability of the report in the City Clerk's office, Library, Parks and Recreation Administration, Community Center, and Senior Center.

Copies of this report have been distributed to the Parks and Recreation Commission and the Sunnyvale Historical Society and Museum Association.

ALTERNATIVES

1. Council approves the attached Revised/Updated Agreement between City of Sunnyvale and Sunnyvale Historical Society and Museum Association for the Design, Development, Construction and Lease of a Heritage Museum at Sunnyvale Heritage Center at the Sunnyvale Community Center and authorizes the City Manager to enter into the agreement.
2. Council does not approve the attached Revised/Updated Agreement between City of Sunnyvale and Sunnyvale Historical Society and Museum Association for the Design, Development, Construction and Lease of a

Heritage Museum at Sunnyvale Heritage Center at the Sunnyvale Community Center and does not authorize the City Manager to enter into the revised agreement.

3. Other option as directed by Council.

RECOMMENDATION

Staff recommends Alternative No. 1.

The revised agreement clarifies that the intent of the agreement between the City and the SHSMA is equivalent to a lease agreement – the City will maintain ownership of the Heritage Museum building and the Historical Society will have full responsibility for constructing the new facility and operating it upon completion. Additional additions are included in the revised agreement to better define the Society’s use of Parks and Recreation facilities until the new museum is constructed and open for public use.

Reviewed by:

David A. Lewis, Director, Parks and Recreation
Prepared by: Cathy E. Merrill, Assistant to Director

Approved by:

Amy Chan
City Manager

Attachments

A. Revised/Updated Agreement between City of Sunnyvale and Sunnyvale Historical Society and Museum Association for the Design, Development, Construction and Lease of a Heritage Museum at Sunnyvale Heritage Center at the Sunnyvale Community Center with additions from June 2004.

**AGREEMENT BETWEEN CITY OF SUNNYVALE AND SUNNYVALE
HISTORICAL SOCIETY AND MUSEUM ASSOCIATION FOR THE DESIGN,
DEVELOPMENT, CONSTRUCTION AND LEASE, OF A HERITAGE MUSEUM AT
SUNNYVALE HERITAGE CENTER AT THE SUNNYVALE COMMUNITY CENTER**

THIS LEASE AGREEMENT dated _____, 2006, is by and between CITY OF SUNNYVALE, a municipal corporation of the State of California ("CITY"), and SUNNYVALE HISTORICAL SOCIETY AND MUSEUM ASSOCIATION ("SOCIETY"), a California not for profit corporation;

WHEREAS, on December 15, 1992, pursuant to the Open Space Sub-Element of the General Plan of CITY, the City Council of CITY designated a ten (10) acre orchard at CITY's Community Center as a special use site to be known as Orchard Heritage Park; and

WHEREAS, on May 14, 2002, the City Council approved the concept of establishing a historical museum at Orchard Heritage Park as outlined in Report to Mayor and Council No. 02-151, and

WHEREAS, on May 14, 2002, the City Council committed to contributing the sum of \$500,000 to the SOCIETY for the development and construction of a historical museum at Orchard Heritage Park ("the Project"), and

WHEREAS, on May 14, 2002, the City Council committed to replacing the CITY and SOCIETY'S "co-sponsorship" arrangement with a comprehensive agreement for the development, operation and maintenance of a Sunnyvale Historical Museum at Orchard Heritage Park and for all aspects of SOCIETY'S relationship with CITY, and

WHEREAS, on September 24, 2002, the City Council approved a Master Plan for Orchard Heritage Park depicting a conceptual plan for a future museum as outlined in Report to Mayor and Council No. 02-369, and

WHEREAS, on November 12, 2002, the City Council approved a general site plan for the development of a historical museum at Orchard Heritage Park as outlined in Report to Mayor and Council No. 02-433, and

WHEREAS, on June 21, 2004, the City Council of the City of Sunnyvale approved a 50-year Agreement Between City of Sunnyvale and Sunnyvale Historical Society and Museum Association for the Design, Development, operation and Maintenance of a Heritage Museum (“2004 Agreement”) which will now be amended by this Agreement to include the ability for the Society to have exclusive control of the premises to construct a museum in said premises, and

WHEREAS, the parties intend that this Lease Agreement, which restates and amends the 2004 Agreement, shall become operative upon its execution by the parties, and, subject to fulfillment of the conditions contained herein and providing there is no breach of performance, shall remain operative and continue in full force and effect for fifty (50) years from the execution of the 2004 Agreement, a date of June 20, 2054.

NOW, THEREFORE, the parties agree as follows:

SECTION 1. FUNDING AND RECOGNITION FOR DONORS

- (a) CITY shall contribute \$500,000 funding for this project from monies due the City under the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002, the City’s General Fund, or another City funding source.
- (b) SOCIETY shall use the entire \$500,000 CITY contribution to fund architectural designs and museum exhibits. Exhibit costs include those related to professional design, services of an exhibit designer, research and documentation conducted by a professional historian, and costs related to exhibit displays.

- (c) Report to Council 03-295 regarding “Sunnyvale Heritage Museum Plaques and Recognition for Donors Contributing to Museum” is incorporated by reference in this Agreement, and SOCIETY shall comply with all related requirements and conditions contained therein based on City Council’s action of August 26, 2003.

SECTION 2. USE OF CITY PARK FACILITIES

SOCIETY shall be allowed at no charge the continued use of those areas of Murphy Park Building at Murphy Park depicted in Exhibit A as “museum” and “museum work center” for the purpose of maintaining a Sunnyvale Historical Museum until one year following the completion of construction of a Historical Museum at Sunnyvale Heritage Center. In addition, and until the completion of construction of a Historical Museum, SOCIETY will be allowed at no charge the opportunity to make first priority reservations for use of the Murphy Park Multipurpose Meeting room and the Heritage Center Building, after CITY scheduled activities and consistent with CITY policy on facility use. Use of the buildings shall be limited to regular activities of SOCIETY including meetings, exhibitions, and school education programs conducted by the SOCIETY.

SOCIETY shall provide CITY, by January 1 each year, a written request stating the specific dates and times park facilities are to be reserved for use by the SOCIETY. SOCIETY shall provide written notice to CITY as early as possible of the release of any permitted building times that will not be used by SOCIETY. SOCIETY shall comply with all CITY rental use policies and provide facility maintenance so that the facility is in the same condition or better than before they used it each day.

SOCIETY shall repair/replace or pay for damage to City facilities or equipment furnished by CITY, at the discretion of the CITY, if damage occurred during use by SOCIETY.

SOCIETY is specifically prohibited from re-permitting any City facility provided within this agreement to any other organization without first obtaining written approval from the CITY.

With the exception of items stored in that area depicted in Exhibit A as “garage,” upon that one-year anniversary, SOCIETY shall have removed all its belongings from the Murphy Park Building and shall relinquish further use of that structure. Use of the garage area may be used by SOCIETY until needed by CITY. Upon written notice that CITY needs the garage area, SOCIETY shall remove all items stored therein within 3 months of notice. Items not removed by that time may be disposed of by CITY.

SECTION 3. FULFILLMENT OF CONDITIONS OF SOCIETY REGARDING PREPARATION OF DESIGN AND CONSTRUCTION PLANS

SOCIETY shall fulfill the following conditions contained in Section 3 and Section 5.

- (a) The parties acknowledge that SOCIETY has exclusive control of said premises to oversee the planning, design and construction and maintenance of the project for the term specified in this lease, of the PROJECT and shall cause to be prepared at its expense and shall submit to CITY construction plans and specifications for a project (the “Project”) consisting of a historical museum to commemorate the history of the City of Sunnyvale and the local region. Plans and specifications shall include any signage proposed to be erected outside the museum on City property (e.g., directional signage, interpretive signage).
- (b) SOCIETY shall prepare such plans and specifications in consultation with CITY. SOCIETY shall receive approval of all plans and specifications by the Director of Parks and Recreation and/or his designee(s) prior to filing of final plans and specifications under section 3(e) below.
- (c) The Project site consists of an area located within that portion of Orchard Heritage Park named by City Council “The Sunnyvale Heritage Center.” The Project site is more precisely depicted in EXHIBIT B, attached and incorporated by this reference, and final plans and specifications submitted by the SOCIETY shall reflect a museum consistent with Exhibit B. The total square footage of the two-story museum shall not exceed 8,500 square feet with a first-story footprint not to exceed 4,700 square feet.
- (d) Final plans shall bear a resemblance to (but not necessarily be a replica of) the Murphy Bayview Ranch house.

- (e) SOCIETY shall file final plans and construction specifications for the PROJECT with the CITY's Department of Community Development under the miscellaneous plan permit process.

SECTION 4. OBLIGATIONS OF CITY REGARDING REVIEW OF DESIGN AND CONSTRUCTION PLANS

- (a) Upon filing of the final plans and specifications CITY shall review the Project through its staff under the miscellaneous plan permit process.
- (b) All fees that City would otherwise charge SOCIETY in connection with CITY's review and processing of the Project are hereby waived.-

SECTION 5. OBLIGATIONS OF SOCIETY REGARDING CONSTRUCTION AND DEVELOPMENT PHASE

SOCIETY shall have exclusive control to conduct the construction of the Project.

- (a) Prior to construction, SOCIETY shall have secured the CITY's normal building site approval and plan check of the plans and specifications in accordance with Section 3 of this Agreement.
- (b) Prior to construction, SOCIETY shall have obtained all necessary permits authorizing construction of the Project from CITY and other public agencies having jurisdiction over the Project, in compliance with all applicable laws, regulations, codes, and the permitting process.
- (c) Prior to commencement of construction of the Project, SOCIETY shall provide CITY with access to the financial records of SOCIETY, with proof that SOCIETY has sufficient funds to undertake and complete such construction, and that SOCIETY has sufficient funds to maintain and operate the Museum in accordance with Section 7 of this Agreement.
- (d) SOCIETY shall commence construction of the Project not later than June 30, 2008, and complete construction not later than June 30, 2010. SOCIETY shall provide all labor

and materials necessary for construction of the Project, and shall be responsible for making all related payments to contractors associated with the PROJECT.

- (e) SOCIETY shall work closely with CITY regarding access to work site and staging of equipment and materials associated with PROJECT.

SECTION 6. OBLIGATIONS OF CITY REGARDING CONSTRUCTION AND DEVELOPMENT PHASE

- (a) CITY shall use reasonable efforts to expedite planning, permits and approval for construction of the Project.
- (b) CITY shall conduct periodic inspections of the project to ensure compliance with Federal, State and local requirements.

SECTION 7. OPERATION AND MAINTENANCE

- (a) Financial Accounting—SOCIETY shall employ standard business accounting practices in managing the financial affairs of the museum.
- (b) Use of Museum—interior of the building is designated exclusively for the purpose of a museum and related activities. SOCIETY shall not use the museum interior for other purposes without the prior permission of CITY. CITY shall not use the museum interior for other purposes without the prior permission of SOCIETY.
- (c) Maintenance of Building—Society shall be solely responsible for the routine care and upkeep of the museum's interior and exterior, and shall maintain both in a condition consistent with the standards of care provided to City buildings by the Facilities Management Division. At least annually, staff from the Facilities Management Division shall accompany a Society representative on a tour of the museum and evaluate its condition using standard City forms used for this purpose. Deficiencies noted shall be addressed by SOCIETY within 1 month, with the exception of hazardous conditions, which shall be eliminated within 24 hours by SOCIETY.

- (d) Landscaping—SOCIETY shall have no responsibility relative to exterior landscaping associated with the museum. If and when CITY re-designs the landscaping immediately adjacent to and associated with the museum, CITY shall provide SOCIETY the opportunity to provide input to the re-design prior to actual renovation, and SOCIETY’S responsibilities relative to maintenance of exterior landscaping shall be re-evaluated by both parties.
- (e) Signs—City shall permit SOCIETY to erect interpretive, informational and directional signage pertaining to Orchard Heritage Park and its various components (including, but not limited to, the pending museum, Orchard Heritage Interpretive Park Exhibit; Sunnyvale Heritage Center, Bianchi Barn and orchard). Specific language, location, materials and design shall be approved by the Director of Parks and Recreation prior to construction or installation. SOCIETY shall be responsible for meeting any and all signage requirements resulting from any use of Proposition 40 funds as required by the State of California. Signs may be approved for installation prior to approval of museum design or construction phases.
- (f) Hours of Operation—SOCIETY shall ensure museum is staffed and open to the general public a minimum of 3 days per week, 3 hours per day, including at least one weekend day each week. Museum shall close by no later than 10 p.m. each evening unless otherwise permitted by the Director of Parks and Recreation. Hours of operation shall be clearly posted and visible to the general public on the exterior of the museum.
- (g) Programming/Curating—SOCIETY shall have sole responsibility for curating and programming the museum, including decisions related to procurement of artifacts, display of materials, rotation of displays, etc. SOCIETY shall maintain two rooms with a combined minimum of 700 square feet of space devoted to the purpose of “rotating” displays, and shall change exhibits associated with “rotating displays” at least annually.

- (h) Use of Outdoor Area and Sunnyvale Heritage Center—CITY shall provide at no charge to SOCIETY general use of the outdoor area depicted by Exhibit C for up to ten (10) weeks (five consecutive weeks, twice yearly) during the school year for the purpose of providing educational experiences for local elementary school children. SOCIETY shall also have use of the outdoor area and Sunnyvale Heritage Center building for fund-raising purposes four times each year for a period of up to 48 hours per time. SOCIETY shall be allowed to request reservation of this area up to six (6) months in advance.
- (i) CITY shall have no obligations in association with SOCIETY’S use of either outdoor area beyond permitting said use. All work associated with the preparation, implementation, and clean-up of said use shall be the responsibility of SOCIETY.
- (j) Keys and Security—SOCIETY shall be responsible for the security of the museum, including keys, locks and security system. CITY shall be provided two keys and any security access codes to the museum (for Superintendent of Facilities and Superintendent of Parks).

SECTION 8. OBLIGATIONS OF CITY UPON COMPLETION AND ACCEPTANCE OF PROJECT

- (a) Upon completion of construction of the Project as defined in Section 3. above and acceptance of it by CITY, ownership in the Project shall vest in CITY. The SOCIETY shall thereupon have exclusive control of the Museum Project (“Leased Premises”) for the remainder of the 50-year term of the 2004 Agreement, starting in 2004 until June 20, 2054.
- (b) For the first five years following completion of construction of the Project and acceptance of it by CITY, CITY shall pay all museum expenses billed by Pacific Gas and Electric Company (PG&E), up to a maximum of \$4,000 annually. SOCIETY shall be responsible for all utility costs in excess of this amount, and for the cost and expense of cable, computer, and/or telephone bills. Following these first five years, SOCIETY shall become responsible for furnishing all utilities (including, but not limited to, water, gas, electricity, sewer, and garbage) at no cost or expense to CITY.

- (c) CITY shall list the Sunnyvale Historical Society and Museum Association and the Sunnyvale Historical Museum's hours of operation in its Recreation Activity Guide for the purpose of promoting both the SOCIETY and the Museum at no charge to SOCIETY.

SECTION 9. FEES AND CHARGES

- (a) SOCIETY shall not charge the public for admittance to the Museum without prior consent of the CITY; CITY shall not charge the public for admittance to the Museum without prior consent of SOCIETY; the consent of either party shall not be unreasonably withheld. Donations to the museum shall be the responsibility and property of SOCIETY. CITY shall not charge SOCIETY any fees for its use of the Museum, provided that such use is first scheduled and approved by the Director of Parks and Recreation of CITY or his or her designee.

SECTION 10. INDEMNIFICATION AND INSURANCE.

- (a) SOCIETY shall defend, indemnify and hold harmless CITY, its officers, agents and employees from any claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees, in connection with any death of or bodily injury to persons or loss of or damage to property arising out of or in any way connected with the act, omission, or negligence of SOCIETY, its officers, employees, agents, contractor, subcontractor or any officer, agent or employee thereof in relation to the performance by SOCIETY of its obligations under this Agreement.
- (b) SOCIETY shall obtain and keep in force a liability insurance policy in the amount of not less than \$1,000,000.00 insuring against the risks of personal and bodily injury and loss of or damage to property arising out of the performance by SOCIETY of its obligations under this Agreement. Such insurance policy shall designate CITY, its officials, employees, agents and volunteers as additional insureds with respect to liability arising out of activities performed on behalf of SOCIETY under this

Agreement. For any claims related to such activities, SOCIETY's insurance shall be primary.

- (c) SOCIETY shall obtain from any contractors performing activities designated in this Agreement with regard to the Project, whether such persons are performing such activities for compensation or in kind, certificates of such liability insurance protecting against the risks described in Section 5(b) as such contractors may have in effect. Such certificates shall designate CITY, SOCIETY, and their officials, employees, agents and volunteers as additional insureds with respect to liability arising out of activities performed by the contractor on behalf of SOCIETY under this Agreement.
- (d) CITY shall, at the expense of CITY, add the Museum Building to the City's Property Coverage insurance policy. SOCIETY shall provide insurance coverage, at SOCIETY's expense, for contents or any valuable or precious artifacts. Such insurance coverage requires written authentication and valuation of each item covered. CITY shall not be responsible for the replacement of any valuable artifact that is damaged or stolen from the museum.

SECTION 11. REPRESENTATIVES OF THE PARTIES

- (a) The Director of Parks and Recreation or designee shall represent CITY in all matters pertaining to the administration of this Agreement. All requirements of CITY pertaining to the Project shall be coordinated through the CITY representative.
- (b) The President of SOCIETY or designee shall represent SOCIETY in all matters pertaining to the administration of this Agreement. All requirements of SOCIETY pertaining to the Project shall be coordinated through the SOCIETY representative.

SECTION 12. TIME OF THE ESSENCE.

Time is of the essence of this Agreement. If SOCIETY fails to perform its obligations set forth in Section 5 in a timely manner, CITY may terminate this Agreement, except to the extent that such obligations may be suspended pursuant to Section 6.

SECTION 13. FORCE MAJEURE.

If, due to act of God; fire; flood; storm; inclement weather; earthquake; drought; acute restrictions or riot; war or insurrection; plant or animal infestation or disease; sudden or severe energy shortage; strike; work stoppage; work slowdown or other concerted job action; or other condition of emergency or disaster beyond the control of either party which makes performance of any of its obligations under this Agreement impossible or extremely impracticable, such obligations shall be suspended during such time any such condition or conditions exist.

SECTION 14. DISCRIMINATION.

Neither CITY nor SOCIETY shall discriminate in the employment of persons engaged in the performance of this Agreement on account of race, color, national origin, ancestry, sex, disability, sexual orientation, or medical condition, in violation of state or federal laws, or any other basis otherwise prohibited by state or federal law.

SECTION 15. NOTICES.

All notices shall be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Director of Parks and Recreation
 City of Sunnyvale
 P. O. Box 3707
 Sunnyvale, CA 94088-3707

To SOCIETY: President
 Sunnyvale Historical Society and Museum Association
 P. O. Box 61301
 Sunnyvale, CA 94088

SECTION 16. EFFECT OF WAIVER OF BREACH OR VIOLATION.

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provision of law shall not be deemed to be a waiver of any other term, covenant, or condition or law. The subsequent acceptance by either party of any money that may become due hereunder shall not be deemed a waiver of any preceding breach or violation by the other party of any term or condition of this Agreement, or of any applicable law.

SECTION 17. LEGAL ACTIONS; ATTORNEY FEES.

- (a) Any disputes regarding this Agreement shall be resolved according to the laws of the State of California. Any legal proceedings shall be instituted in the courts of the State of California and County of Santa Clara, irrespective of any claim of diversity of citizenship or other possible jurisdictional conditions.
- (b) The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party, not to exceed \$ 5,000.00.

SECTION 18. INTEGRATED AGREEMENT.

This document represents the entire and integrated Agreement between CITY and SOCIETY and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement shall not be construed as nor deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action herein for any cause whatever.

SECTION 19. AMENDMENT OF AGREEMENT.

This Agreement may be amended only by written instrument, signed by both CITY and SOCIETY. Within six (6) months following the five (5) year anniversary of the execution of this Agreement, both parties shall meet to thoroughly review its terms and the condition of the museum building and shall consider mutually agreeable revisions to this Agreement. Similar actions shall be taken by both parties within six (6) months following the ten (10) year anniversary, fifteen (15) year anniversary, and twenty (20) year anniversary of the original execution of this Agreement.

SECTION 20. ALL PROVISIONS OF AGREEMENT ARE CONDITIONS.

All provisions of this Agreement are expressly made conditions.

SECTION 21. TERMINATION OF AGREEMENT; SURVIVAL OF OBLIGATIONS.

This Agreement shall become operative upon its execution by the parties and provided the conditions are fulfilled by SOCIETY, which shall remain operative and continue in full force and effect for fifty (50) years from the execution of this agreement, except that

- (a) SOCIETY may terminate this Agreement upon written notice to CITY and providing CITY the opportunity to cure any default, or commence to cure a default if the cure period will exceed 10 days, within 10 days from the date of receipt of the notice for any of the following reasons:
 - (1) The failure of CITY to comply with any and all terms of this agreement.
 - (2) The failure of CITY to approve the plans and specifications within a reasonable time.
 - (3) The failure of CITY to issue all permits necessary for construction of the Project within a reasonable time.
- (b) CITY may terminate this Agreement upon written notice to SOCIETY and providing SOCIETY the opportunity to cure any default, or commence to cure a default if the cure period will exceed 10 days, within 10 days from the date of receipt of the notice for any of the following reasons:

- (1) The failure of SOCIETY to comply with any and all terms of this agreement
 - (2) The failure of SOCIETY to commence construction of the Project by June 30, 2008.
 - (3) The failure of SOCIETY to complete construction of the Project by June 30, 2010.
- (c) This Agreement may be terminated at any time upon the mutual assent of the City Council of CITY and the Board of Directors of SOCIETY.
- (d) Upon termination of this Agreement the parties shall have no further responsibilities thereunder, except that the obligation of SOCIETY pursuant to Section 3(a) shall survive the termination of this Agreement.

SECTION 22. EFFECTIVE DATE

Upon approval of this Lease Agreement by the City Council (“Effective Date”), this Lease Agreement shall replace and supplant the 2004 Agreement except that the term of this Lease Agreement shall be the unexpired term of the 2004 Agreement and shall expire June 20, 2054.

IN WITNESS WHEREOF, CITY and SOCIETY have executed this Agreement on the day and year first above written.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By

City Clerk

By: _____

Amy Chan

Date

City Manager

APPROVED AS TO FORM:

SUNNYVALE HISTORICAL SOCIETY AND
MUSEUM ASSOCIATION ("SOCIETY")

By

City Attorney

By _____

Rosa Romano

Date

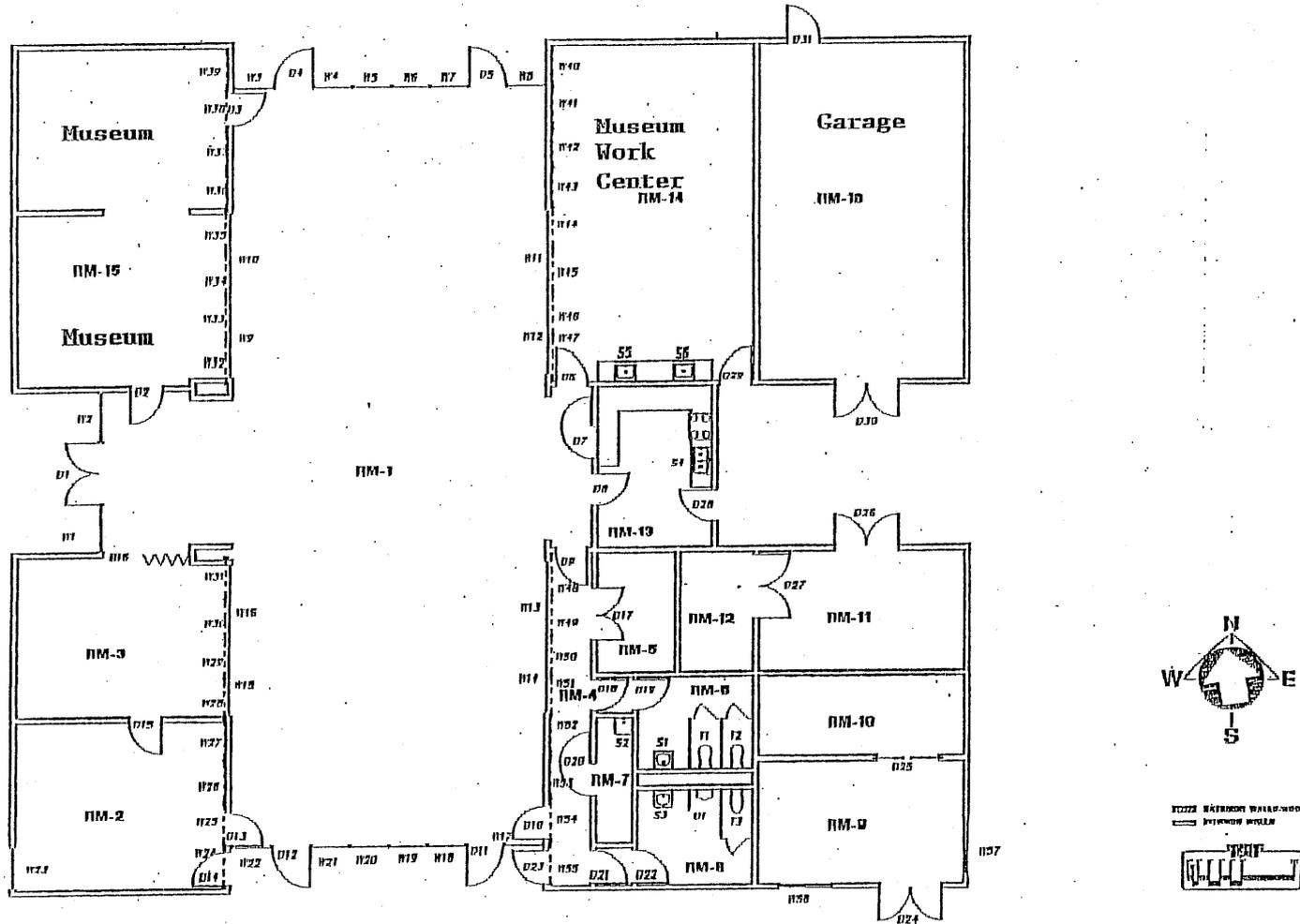
President

By _____

Laura Babcock

Date

Chairwoman, Museum Committee



RSC Inc.
Consulting Engineers

Roofing Services and Consultants, Inc.
1807 O'TOOLE AVE • SUITE C108 • SAN JOSE • CA • 95131
PHONE: (408)955-9050 • FAX: (408)955-9054

MURPHY PARK

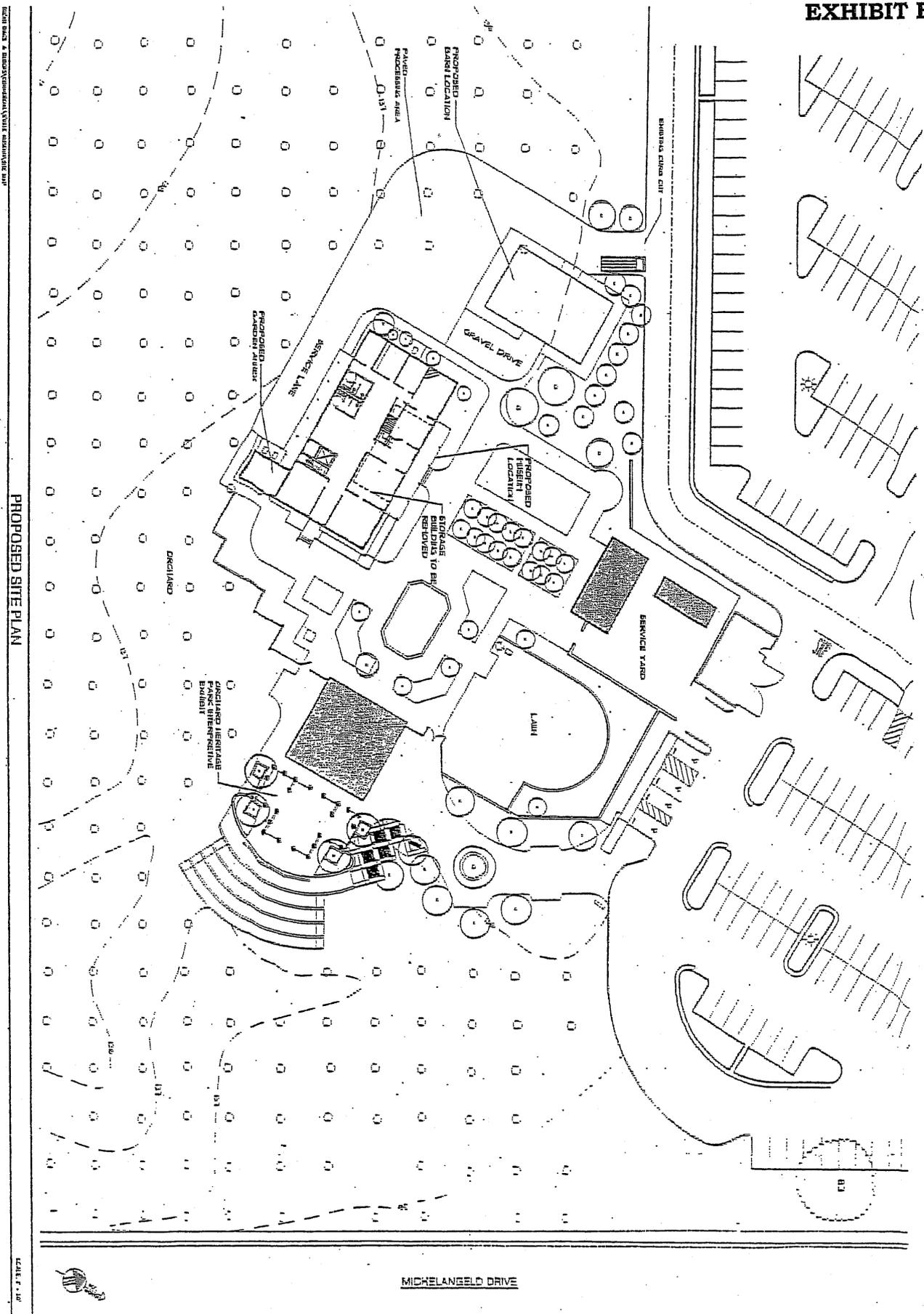
FLOOR PLAN
RECREATION
BUILDING NO. 024-401



City of Sunnyvale
456 WEST OLIVE AVE.
SUNNYVALE, CA 94086

DRAWN BY: SSR	DESIGNED BY: GSB	ENGINEER: KPA
CADD FILE: 024-401	DATE: 06/15/92	TIME: 13:56
SCALE: SEE GRAPHIC SCALE	DRAWING NUMBER: A1	
PROJECT NO. 024-401	RSC JOB NO. PT-127	

EXHIBIT A



DATE: 08/11/08 11:00 AM

PROPOSED SITE PLAN

SCALE: 1" = 10'

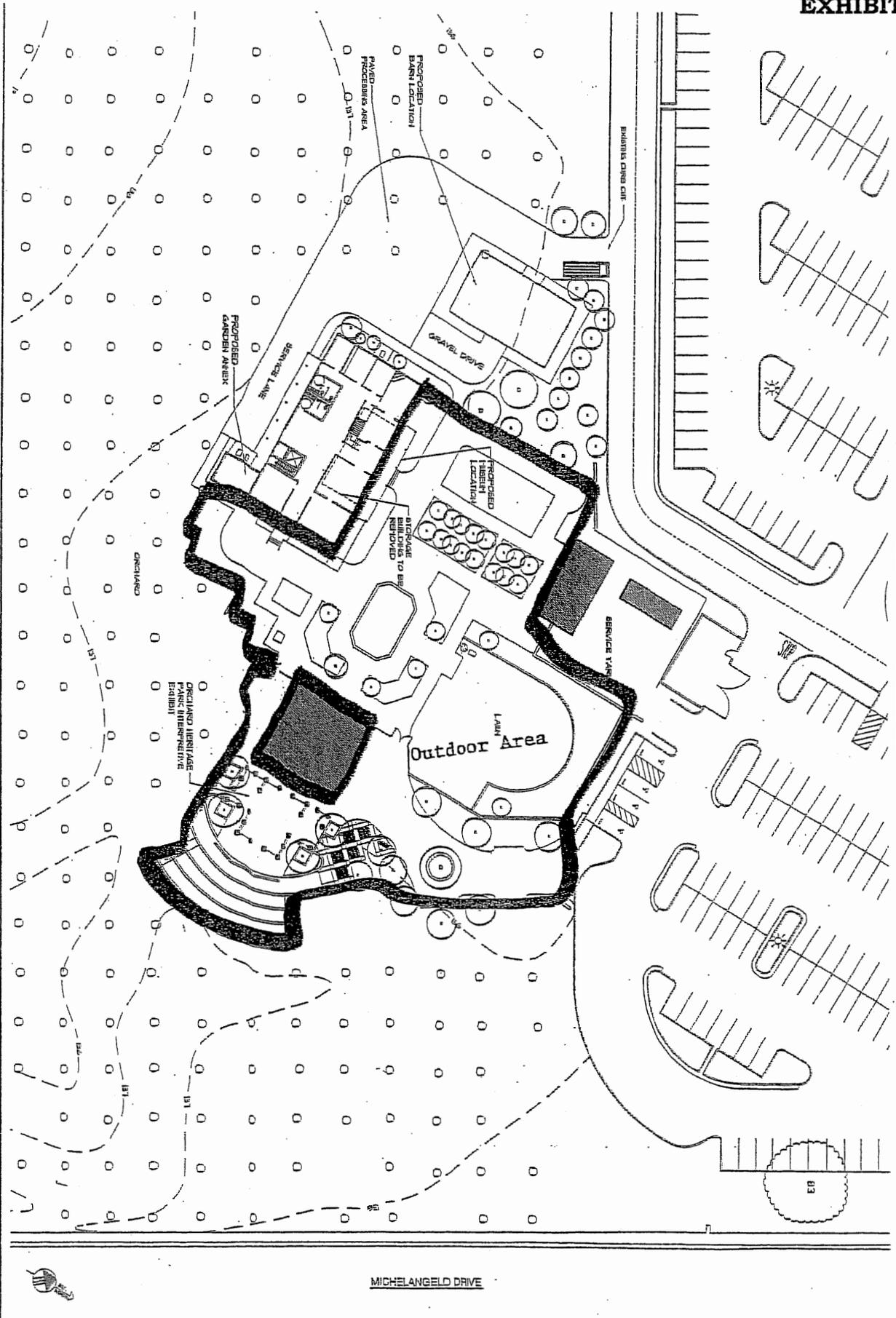
PROJECT NO.	A-2	
	DATE	08/11/08
DESIGNER	ARCHITECTURAL ALLIANCE	
SCALE	1" = 10'	
PROJECT NAME	SUNNYVALE HERITAGE CENTER	

SUNNYVALE HERITAGE CENTER
 at the
SUNNYVALE COMMUNITY CENTER
 850 REMINGTON DRIVE, SUNNYVALE CA 94088

Architectural Alliance
 Joseph M. Gutierrez • Architect • AIA
 2045 Foothill Blvd. Suite 200
 Sunnyvale, CA 94089

SUNNYVALE HERITAGE CENTER AT THE SUNNYVALE COMMUNITY CENTER

PROPOSED SITE PLAN



SCALE: 1" = 20'

OF 2
A-2

DATE	DATE	DATE	DATE

PROPOSED SITE PLAN

SUNNYVALE HERITAGE CENTER
at the
SUNNYVALE COMMUNITY CENTER
550 REMINGTON DRIVE, SUNNYVALE CA 94085



Architectural Alliance
Joseph H. Guierrez • Architect • A.I.A.
2240 Park Boulevard, San An... CA 94025 (415) 335-4047 FAX (415) 335-2525